IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 3473 OF 2007

Mr Mahesh Ragho Mali ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr V.P. Sawant, Advocate with Mr P. M. Jadhav, for the applicant.

Mr K.V.Saste, A.P.P for the respondent.

CORAM: V.C. DAGA,J.

DATED: 29.10.2007.

P.C.

1. Heard learned counsel for the applicant and the learned APP for the State.

2. Perused the application and the material available on record.

3. The applicant-original accused in C. R. No. 99 of 2007, registered with Bhiwandi Taluka Police Station, for the offence under Sections 147, 148, 307, 326, 314, 325, 323, of the I.P.C., is seeking anticipatory bail under Section 438 of the Cr.P.C.

4. The learned counsel for the applicant submits that the name of applicant does not reflect

in the F.I.R. He further submits that injured witness Mr Ashok Sapte alone implicates the present applicant. He further submits that other co-accused persons, involved in the assault, have already been enlarged on bail vide order dated 4.10.2007 passed by learned Ad-hoc Additional Sessions Judge, Thane. He, thus, submits that on parity, applicant would be entitled for bail.

5. Learned A.P.P. opposed the application for bail contending that it is not necessary that everybody's name should be reflected in the F.I.R. He further submits that injured witness is not supposed to disclose all factual happenings in the F.I.R. He further submits that the order of granting regular bail cannot be a basis for granting anticipatory bail. He further submits that the investigation is in progress and looking to the serious injuries suffered by Mr Ashok, at this stage, if the anticipatory bail is granted, same will result in obstruction of the investigation. He brought to my notice observations of the learned Sessions Judge, Thane made in the order dated 12.10.2007; wherein, the prayer for anticipatory bail made at the instance of the present applicant came to be rejected. Para 6 of the said order reads as under:-

6. "It appears that Ashok Sapate, injured, to whom the applicant Mahesh caused injuries on the head, was in the hospital for about more than one month. But, it appears that the major period of his hospitalisation was not for the head injury but for the fracture sustained by him on both the legs. That apart, it appears that maximum injuries were caused to the said witness Ashok Sapate and one of the injuries to the head caused to him was by the applicant Mahesh. Under these circumstances, the order of bail by me to certain other applicants; namely, Prashant Patil and Bablu Patil cannot be considered on the ground of parity which is also raised. An order based upon parity can be passed only if the roles of different accused are also at par. If there is no parity in the roles played by the accused then there is no question of granting bail also on that count. Considering this fact, in my opinion, the said ground as far as the applicant Mahesh Mali is concerned is totally unsustainable."

6. Havig seen the observations of the learned Sessions Judge, who has specifically mentioned maximum injuries have been inflicted on the witness-Mr Ashok, by the present applicant Ramesh. I see no reason to take contrary view, than the view taken by learned Additional Sessions Judge, Thane. The smooth progress of the investigation cannot be arrested, at this stage. In this view of the matter, it would not be in the interest of prosecution to enlarge the applicant on anticipatory bail.

7. In the result, the present application stands rejected.

8. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(V.C.DAGA,J)